

COMP

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEVADA**

LYDIA MARTINEZ,

Plaintiff

CVA NO.

v.

MGM MIRAGE RESORT HOTEL, d/b/a/
MIRAGE HOTEL, a Delaware Corporation,
BARTENDERS & BEVERAGE
DISPENSERS UNION LOCAL 165, an
unincorporated entity, And DOES 1-1000

Defendants

**COMPLAINT PURSUANT TO
§301, LABOR MANAGEMENT
RELATIONS ACT, 29 U.S.C. §185
FOR BREACH OF COLLECTIVE
BARGAINING AGREEMENT,
BREACH OF DUTY OF FAIR
REPRESENTATION**

DEMAND FOR JURY TRIAL

COMPLAINT

COMES NOW, Plaintiff LYDIA MARTINEZ by and through her attorney, JORGE L. SANCHEZ, Esq. of the law firm of SANCHEZ LAW GROUP Ltd., and pleads and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff, LYDIA MARTINEZ is a resident of Clark County, Nevada.
2. Defendant, MGM MIRAGE RESORT HOTEL, d/b/a MIRAGE HOTEL (“Mirage”) is upon information and belief, an entity organized and existing under the laws of the State of Delaware with its principal place of business in Clark County, Nevada.

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1 never had been requested to sign off on an employee's disciplinary action, and the possibility
2 that her signature may be construed as union validation of the disciplinary action. Furthermore,
3 the manager appeared to be annoyed when Plaintiff insisted on measures to ensure receipt of a
4 copy of the disciplinary action since the copier was apparently malfunctioning.

5 9. The following day, on or about July 18, 2008, Plaintiff was contacted by
6 management to attend a disciplinary action against a bartender (who worked at Revolutions).
7 During this meeting, Plaintiff perceived irregularities in the disciplinary meeting that appeared to
8 contravene the terms of the CBA. When Plaintiff informed management of such discrepancies,
9 she was told that she was called only to observe. Plaintiff disagreed and remarked that reticence
10 in the face of a CBA provision would be inconsistent with her duties and responsibilities as a
11 shop steward.

12 10. A few hours later, Plaintiff reported for her shift. Shortly afterwards, the
13 Kokomos manager called her a liar in front of customers (over alleged remarks concerning
14 Plaintiff's use of a particular timeclock to punch in). Plaintiff attempted to find out what was the
15 matter, she was threatened with insubordination. When later attempts to mollify the manager
16 failed, Plaintiff became upset and went out on break.

17 11. While she was on break, she was accosted by Mirage's Food and Beverage
18 Director. She was ordered to report to his office for a meeting. A beverage manager was in
19 attendance as well. He inquired about her whereabouts and informed her they had been waiting
20 to talk to her since the beginning of her shift. The Director accused Plaintiff of being
21 insubordinate towards the Kokomos manager. For some undisclosed reason, he ordered Plaintiff
22 to take a drug test. He refused to explain the basis for a drug test. Plaintiff complied under
23 duress and with confidence that she would pass any urinalysis. Plaintiff spent several hours at a
24 very unkempt facility to provide a urine sample. Afterwards, Plaintiff was advised she was
25 suspended.
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1 12. On or about July 29, 2008, Plaintiff reported to what was supposed to be a
2 due process hearing. In attendance was Mirage management and a representative of the Union.
3 The Mirage manager accused Plaintiff of not contacting the doctor who conducted the urinalysis.
4 Plaintiff provided an account of her multiple messages. Then she was informed that her last
5 break (on July 18th-prior to her suspension) was unauthorized.

6 13. As a continuation of this witch hunt, the manager informed Plaintiff that
7 her urinalysis came back positive. Plaintiff vehemently denied any illicit drug use. She noted
8 the problems with the facility that administered the test. She also mentioned that if the test
9 somehow accurate, it was due to her legally prescribed medications. The manager open an
10 employee handbook contrived a provision of the CBA as stating that all prescription medication
11 had to be reported to the beverage. The manager quickly closed the handbook before Plaintiff
12 could see it. The meeting concluded with no discussion or inquiry that led to the order for drug
13 testing (i.e. confrontation by the Kokomos manager and the circumstances surrounding her
14 attendance at employee disciplinary proceedings).

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16 14. On or about August 7, 2008, Plaintiff was terminated. Plaintiff contacted the
17 Union about initiating a grievance. She was flatly rejected and told that she would not work as a
18 bartender in this town again.

19 **FIRST CLAIM**
20 **BREACH OF COLLECTIVE BARGAINING AGREEMENT**

21 20. Plaintiff repeats and realleges the foregoing allegations as if fully set forth
22 herein.

23 21. Plaintiff's employment with Mirage was covered by a Collective Bargaining
24 Agreement that was duly entered into between the Mirage and the Union. Plaintiff asserts
25 "hybrid" claim pursuant to §301, Labor Management Relations Act ("LMRA") 29 U.S.C.
26 §185(a) based upon the following breaches of the CBA committed by Mirage as set forth below.

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1 22. Mirage breached Art. 8.01 of the CBA by discriminating against Plaintiff due
2 to her activity on behalf the Union in the capacity of a union steward. The agreement stipulates
3 in relevant part: “[t]here shall be no discrimination by the Employer or the Union against
4 employee because of . . . or activity on behalf of the Union. . “ Plaintiff’s union activities were a
5 causal factor for her termination due, which includes but not limited to, insubstantial infractions
6 that were leveled at her as the basis of disciplinary action, contrived breaches of prescription
7 drug policies that did not exist, and terminating the Plaintiff without just cause.

8 23. Mirage breached Art. 6.01(a) of the CBA for terminating the Plaintiff without
9 just cause. Plaintiff did not engage in any acts that would justify termination. The CBA states
10 that an employee may be subject to termination for proscribed and illicit act towards guests,
11 failing to report to work or walking off the job, consuming drugs and alcohol while on duty or
12 being under the influence during the employee’s shift. The Mirage fired Plaintiff because she
13 purportedly tested positive. Assuming that the Plaintiff tested positive, that is not a stipulated
14 basis for immediate just cause termination. The Mirage tried to make a stretch to say that she
15 tested positive “while on duty” However, as those terms are commonly understood, the status of
16 “testing positive while on duty” does not mean or equate to acts “drug use while on duty” or
17 “working under the influence.” Mirage illicitly attempted to change “status” into actionable
18 conduct by utilizing the terms –
19 testing positive while on duty. Furthermore, Plaintiff was not engaged in her normal assignment
20 when she was tested.

21 22. In the alternative, without waiver, Mirage breached Art. 601(a) because
23 Plaintiff did not imbibe or otherwise consume any controlled substances. Hence, the alleged test
24 results are incorrect. Furthermore, Plaintiff was not afforded an opportunity to repudiate the test
25 results or otherwise demonstrate the unreliability of the test results.

26 25. Mirage breached Art. 8.01(b) by ordering Plaintiff to take a drug test without
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1 reasonable cause. There was no basis for a drug testing in this instance, nor was Plaintiff duly
2 apprised of the basis of any belief that she was under the influence.

3 26. Based upon the foregoing, as a direct and proximate result of the breach of the
4 CBA, Mirage's actions have caused Plaintiff to suffer substantial harm and injury, and Plaintiff
5 is entitled to damages in an amount to be determined at trial together with attorney's fees and
6 costs.

7 **SECOND CLAIM**
8 **BREACH OF GOOD FAITH AND FAIR DEALING**

9 27. Plaintiff repeats and re-alleges the foregoing allegations as if fully set forth
10 herein.

11 28. Plaintiff asserts a §301 LMRA, 29 U.S.C. §185(a) claim based upon the
12 Union's breach of its duty of fair representation in conjunction with her claim against the
13 Mirage.
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15 29. The Union flatly rejected Plaintiff's request to initiate a grievance and told
16 her that her career was over. It undertook little or no efforts to dispute or challenge the spurious
17 allegation that were being leveled at her. It undertook no measures although it was clear that
18 Plaintiff was made the subject of a witch hunt as a result of her union activities.

19 30. The Union made no effort to challenge the termination although the
20 plain language of the CBA does not make testing positive for a controlled substance a reason for
21 justification for termination. In that regard, the Union failed to conduct any investigation or
22 inquiry with respect to the drug test, how it was administered, whether or not there was just
23 cause, or the underlying circumstances that led to the arbitrary order for testing.
24

25 31. Based upon the foregoing, as a direct and proximate result of the breach of
26 the CBA, Mirage's actions have caused Plaintiff to suffer substantial harm and injury, and
27 Plaintiff is entitled to damages in an amount to be determined at trial together with attorney's
28 fees and costs.

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WHEREFORE, Plaintiff Lydia Martinez hereby and respectfully requests that this Court grant judgment against Defendants as follows:

1. Actual damages plus interest as provided by law, including prejudgment interest, in sums to be determined at the time of trial;
2. General damages in sums to be determined at the time of trial;
3. Punitive and/or exemplary damages in an amount appropriate to punish and/or set an example of Defendants;
4. Reasonable attorneys' fees;
5. Cost of suit;
6. Prejudgment interest;
7. For any and all such other and further relief as the Court may deem just.

DATED this 18th day of October, 2008.

SANCHEZ LAW GROUP Ltd.

By /s/ Jorge L. Sanche
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